Montana Constitutional Convention Occasional Papers

REPORT NUMBER 2

Enabling Act for the Montana Constitutional Convention of 1889

Prepared By:
Montana Constitutional Convention Commission

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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

ENABLING ACT FOR THE MONTANA CONSTITUTIONAL CONVENTION

OF 1889

CONSTITUTIONAL CONVENTION OCCASIONAL PAPER NO. 2

PREPARED BY

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

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CONSTITUTIONAL CONVENTION COMMISSION

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PREFACE

The delegates to the 1971-1972 Montana Constitutional Convention will need historical, legal and comparative information about the Montana Constitution. Recognizing this need, the 1971 Legislative Assembly created the Constitutional Convention Commission and directed it to assemble and prepare essential information for the Convention.

To fulfill this responsibility, the Constitutional Convention Commission is preparing a series of research reports under the general title of Constitutional Convention Studies. In addition to the series of research reports the Commission has authorized the reprinting of certain documents for the use of Convention delegates.

This occasional paper republishes, as amended, the act adopted by Congress February 22, 1889 which enabled the people of North and South Dakota, Washington and Montana to form constitutions prior to being admitted into the Union. The Enabling Act provided for the election of 75 delegates to Constitutional Conventions to begin in each territory July 4, 1889. The work of the conventions was underwritten by a federal appropriation of $20,000 for each territory. In addition to providing the machinery for the constitutional conventions, the statute donated public lands to each of the states and required the conventions to adopt certain ordinances irrevocable without the consent of the United States and the people of the state.

Since the provisions of the 1889 Enabling Act are binding on the 1971-1972 Constitutional Convention in regard to state boundaries, public lands and the ordinances, the Constitutional Convention Commission felt the act should be republished for the use of the delegates.

The reprinting of the Enabling Act for the 1889 Constitutional Convention is respectfully submitted to the people of Montana and their delegates to the 1971-1972 Montana Constitutional Convention.

ALEXANDER BLEWETT

CHAIRMAN

New States may be admitted by the Congress into this Union. . . .

United States Constitution
Article IV, Section 3(1)

THE ENABLING ACT

AN ACT to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the inhabitants of all that part of the area of the United States now constituting the territories of Dakota, Montana, and Washington, as at present described, may become the states of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

Contemporaneous Construction

The supreme court in construing provisions of the state constitution and of the enabling act, under which the former was adopted and the state admitted into the Union, will, in response to a contention that where the constitution is in conflict with the enabling act the former must yield, reconcile, if possible, the provisions of both instruments, since courts will with the greatest hesitation hold inoperative and invalid a provision of the state constitution. The doctrine of contemporaneous construction only becomes effective when there is a reasonable doubt as to the meaning of the provision to be construed, and acquiescence for no length of time in a construction by coordinate branches of the government, which has the effect of nullifying a provision of the constitution, will justify the courts in adopting such construction unless it is the only reasonable one. State ex rel. Haire v. Rice, 33 M 365, 392, 83 P 874, affd. 204 U S 291, 51 L Ed 490, 27 S Ct 281.

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

§ 2. The area comprising the territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time assemble in convention at the city of Sioux Falls.

§ 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assembly thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories respectively, persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the

same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief justice, and the secretary of said territories; and the governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty-nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty-nine; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be seventy-five; and all persons resident in said proposed states, who are qualified voters of said territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

§ 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the Fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed states, that they adopt the constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and state governments for said proposed states, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said states:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or

reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of congress may prescribe.

State May Tax Production Under Lease of Trust Patent Indian Land

Held, that the state board of equalization is authorized to tax the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 288, 54 P 2d 117, with exception of the royalty owner's net proceeds tax, for the reason that the federal supreme court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 359, 361, 116 P 2d 1012.

"Trust Patent" Indian Land Not Taxable by State

Under subdivision 2 of section 4 of the enabling act and subsection 2 of ordinance No. 1, state constitution, the state has no authority, without congressional consent, to tax land or permanent improvements thereon, held under a "trust patent" issued to an Indian allottee. Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 279, 54 P 2d 117.

References

State v. Youpee, 103 M 86, 91, 61 P 2d 832; Ogle v. Town of Ronan, 112 M 394, 396, 117 P 2d 357; Milne v. Leiphart, 119 M 263, 174 P 2d 805, 807.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

Crime on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State v. Danielson, 149 M 438, 427 P 2d 689.

§ 5. That the convention which shall assemble at Bismarck shall form a constitution and state government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and state government for a state to be known as South Dakota: Provided, That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words, "For the Sioux Falls constitution," or the words, "Against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection, at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legisla-

tive districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the state of South Dakota shall be admitted as a state in the Union under said constitution as hereinafter provided; but the archives, records and books of the territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "against the Sioux Falls constitution," then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

§ 6. It shall be the duty of the constitutional convention of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory, which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of such states shall obligate itself to pay its proportion of said debts and liabilities the same as if they had been created by such states respectively.

§ 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the state adopting its constitution is admitted into the Union, be called by the name of the territory of North Dakota or South Dakota, as the case may be: Provided, That if either of the proposed states provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention

may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

§ 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided shall be deemed admitted by congress into the Union under and by virtue of this act on an equal footing with the original states from and after the date of said proclamation.

§ 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two, and the representatives to the fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the Union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

§ 10. That upon the admission of each of said states into the Union sections numbered sixteen and thirty-six in every township of said proposed

states, and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Operation and Effect

This is a general granting clause and shows clearly the interest of the congress in the common schools of the newly admitted state. Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars ($10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars ($5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons, and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction

of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

NOTE.—This act was previously amended by an act of congress, April 13, 1948, Ch. 183, 62 Stat. at L. 170. This amendment was accepted by the state of Montana by Chapter 18, Laws of 1949 (83-502).

NOTE.—This section is given as last amended by an act of Congress, June 30, 1967, 81 Stat. at L. 106.

Act Not Objectionable As Against This Provision

Treating section 81-1702, authorizing the state land board to enter into pooling agreements relative to state lands for the extraction of natural gas, not as a lease but as a sale of an estate or interest therein, the limitation of this section that such lands cannot be sold except at public sale after advertising, has application only where the land as a whole is sold, not where merely an interest or estate therein such as the gas or oil therein, is disposed of. Toomey v. State Board of Land Commrs., 106 M 547, 559, 81 P 2d 407.

Disposition of School Land Grant Funds

Section 12, Article XI of the state constitution providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions, and sections 11, 14 and 17 of the enabling act, held not to prohibit use for erection of normal school buildings of income from land grant for state normal schools, nor limit such use to payment of ordinary operating expenses. State ex rel. Blume v. State Board of Education of Montana, 97 M 371, 34 P 2d 515.

Does Not Prohibit United States from Condemning School Lands for Public Works

The Montana enabling act, prohibiting the state from disposing of school lands except at public sale after advertising, does not prohibit the United States from condemning school lands in connection with construction of project in program of public works (National Industrial Recovery Act Secs. 202, 203(a), 40 U.S.C.A. Secs. 402, 403(a)). United States v. State of Montana, 134 F 2d 194, 196.

Farm Loan Act Not in Conflict

The "primary" plan of the farm loan act, providing for investment by state board of land commissioners of state funds in farm mortgages, does not conflict with this section of enabling act. State v. Stewart, 53 M 18, 21, 161 P 309.

lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

Oil and Gas Leases

The amount bid over the minimum of 75 cents per acre as established in section 81-1703 is considered part of the rental and thus placed in the common school interest and income fund to be apportioned and distributed annually to the several school districts in the state as provided in section 5, article XI of the constitution of Montana. State ex rel. Dickgraber v. Sheridan, 126 M 447, 254 P 2d 390. (See, however, dissenting opinions of Justices Anderson and Angstman in 126 M 447, 254 P 2d 390 on pages 397 and 403 respectively.)

The 1953 amendment of section 81-1702 by chapter 122, Laws of 1953 is not inconsistent with federal law. State ex rel. Johnson v. State Board of Land Commrs., 348 U S 961, 99 L Ed 750, 75 S Ct 524, reversing and remanding State ex rel. Jones v. State Board of Land Commrs., 128 M 462, 279 P 2d 393, which had held that oil and gas leases issued under section 81-1702 as amended in 1953 for 20 years and "as long thereafter as oil and gas in paying quantities shall be produced" were not for a term of years and hence violative of section 11 of the enabling act.

Operation and Effect

The enabling act restrictions apply to mineral rights on state lands. A lease of the mineral rights by the state for a period of 5 years, made in 1925, with options to renew, cannot run in total more than 20 years, since congress in 1921 amended section 11 of the enabling act by the act of Aug. 11, 1921, 42 Stat. 158 which limited such leases to 20 years and the amendment was accepted by Montana in 1927 by Laws of 1927, chapter 108 (81-1701 et seq.). Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

References

State ex rel. Wilson v. State Board of Education, 102 M 165, 174, 56 P 2d 1079;

7 U.S.C.A. Secs. 301 et seq., 304, 305; United States v. Wyoming, 331 U S 440, 91 L Ed 1590, 67 S Ct 1349; Cranston v Aronson, 121 F Supp 453, 454.

§ 12. That upon the admission of each of said states into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said states for public buildings at the capital of said states for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.

NOTE.—This section given as last amended by an act of congress, February 26, 1957, Public Law 6, 85th Congress. This amendment was accepted by the state of Montana by Chapter 209, Laws of 1957 (83-503).

Farm Loan Act Not in Conflict

The "primary" plan of the farm loan act, providing for investment by state board of land commissioners of state funds in farm mortgages, does not conflict with this section of enabling act. State v. Stewart, 53 M 18, 21, 161 P 309.

Operation and Effect before Amendment

Capitol land grant funds may be used to repair, renovate or reconstruct an old building and install a roll call voting machine in the chambers of the house of representatives. State ex rel. Morgan v. Board of Examiners et al., — M —, 309 P 2d 336, specifically overruling Bryant v. Board of Examiners et al., — M —, 305 P 2d 340.

Veterans and Pioneers Memorial Building, a Public Building

Chapter 79, Laws of 1941 (repealed), providing for sale of bonds for erection of Montana Veterans and Pioneers Memorial Building and payable in part from income of capitol building land grant, held not to violate sections 12 and 17 of enabling act since proposed building will be useful and beneficial to the executive and legislative departments and is intended for housing of Historical Society, a department of the state government. Willett v. State Board of Examiners et al., 112 M 317, 323, 115 P 2d 287.

§ 13. That five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the Union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states respectively.

§ 14. That the lands granted to the territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota, and Montana, respectively, if such states are admitted into the union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of

the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in the like manner to the state of Washington for the purpose of a university in said state. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the territory of Dakota, for an asylum for the insane shall, upon admission of the said state of South Dakota into the Union, become the property of said state.

Disposition of School Land Grant Funds

Section 12, article XI of the state constitution providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions, and sections 11, 14 and 17 of the enabling act, held not to prohibit use for erection of normal school buildings of income from land grant for state normal schools, nor limit such use to payment of ordinary operating expenses. State ex rel. Blume v. State Board of Education, 97 M 371, 34 P 2d 515.

"University Purposes" Includes Pledging Funds to Erect Building at University

Held, that the state board of education had the power to pledge income and interest derived from land grant fund of University as security for repayment of loan made to it for erection of a journalism building under chapter 133, Laws of 1935 (omitted), the term "university purposes" including necessary buildings. State ex rel. Wilson v. State Board of Education, 102 M 165, 172, 56 P 2d 1079.

Board of education may pledge portion of income from University land grant to repay bonds issued for erection of chemistry and pharmacy building at State University. State ex rel. Dragstedt v. State Board of Education, 103 M 336, 338, 62 P 2d 330.

§ 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said state of South Dakota for the purposes therein designated; and the states of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

Farm Loan Act Not in Conflict

The "primary" plan of the farm loan act, providing for investment by state board of land commissioners of state funds in farm mortgages, does not conflict with this section of enabling act. State v. Stewart, 53 M 18, 21, 161 P 309.

§ 16. That ninety thousand acres of land, to be selected and located as provided in section ten of this act, are hereby granted to each of said states, except to the state of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of lands for such purpose.

§ 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September twenty-eight, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the state of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for state normal schools, eighty thousand acres; for public buildings at the capital of said state, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said state may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the state of North Dakota: A like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the state of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for state normal schools, one hundred thousand acres; for public buildings at the state capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for state charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

Farm Loan Act Not in Conflict

The "primary" plan of the farm loan act, providing for investment by state board of land commissioners of state funds

in farm mortgages, does not conflict with this section of enabling act. State v. Stewart, 53 M 18, 21, 161 P 309.

School Lands and Funds Devoted to Maintenance and Perpetuation

Held, that chapter 3, Laws of 1905 (page 3), authorizing the state board of land commissioners to issue and sell bonds, the proceeds to be applied to the erection, furnishing and equipment of an addition to the State Normal School at Dillon, and pledging as security, for the payment of the principal and interest on such bonds, funds realized from the sale and leasing of the lands granted by the United States under this section of the enabling act (100,000 acres for State Normal School purposes) and licenses received from permits to cut timber thereon, is void because in violation of section 12, article XI, of the state constitution providing that only the interest from investments of such funds together with the rents from leased lands shall be so used. State ex rel. Haire v. Rice, 33 M 365, 392, 83 P 874, affd. 204 U S 291, 51 L Ed 490, 27 S Ct 281.

Section 12, article XI of the state constitution providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions, and sections 11, 14 and 17 of the enabling act, held not to prohibit use, for erection of normal school buildings, of income from land grant for state normal schools, nor limit such use to payment of ordinary operating expenses. State ex rel. Blume v. State Board of Education, 97 M 371, 34 P 2d 515.

Veterans and Pioneers Memorial Building a Public Building

Chapter 79, Laws of 1941 (repealed), providing for sale of bonds for erection of Montana Veterans and Pioneers Memorial Building and payable in part from income of capitol building land grant held not to violate sections 12 and 17 of enabling act since proposed building will be useful and beneficial to the executive and legislative departments and is intended for housing of Historical Society a department of the state government. Willett v. State Board of Examiners et al., 112 M 317, 323, 115 P 2d 287.

References

State ex rel. Wilson v. State Board of Education, 102 M 165, 174, 56 P 2d 1079; Bryant v. State Board of Examiners et al., — M —, 305 P 2d 340; State ex rel. Morgan v. State Board of Examiners et al., — M —, 309 P 2d 336.

§ 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof, for the use and benefit of the common schools of said states.

Construction

This section must be read with reference to section 14 of the organic act. The words "shall be found" and "in lieu thereof" show that this section applies to lands known to be mineral at the time of survey and clear listing. As soon as the survey identified the land and it was not then mineral it went to the state for the common school fund. The land passed and with it the after-discovered minerals. Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

§ 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

References

Cited or applied in Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

§ 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the

expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

§ 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts, therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state; the regular term of said courts shall be held in each district at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district court of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.

§ 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts may be heard and determined by said supreme court of the United States. And the mandate of execution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require: Provided, That the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be directed by the supreme court of the United States

to the circuit or district court of the district of South Dakota, or to the supreme court of the state of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the state of North Dakota, or to the supreme court of the territory of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts, herein named, shall, respectively, be the successor of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the Union.

§ 23. That in respect to all cases, proceedings and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into th Union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the Union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments and proceedings relating to any such cases, shall be transferred to such circuit, district and state courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act, shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district or state court, as the case may be; Provided, however, That in all civil actions, causes and proceedings, in which the United States is not a party, transfer shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceeding filed in the proper court; and in he absence of such request such cases shall be proceeded with in the proper state courts.

§ 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the fifty-first congress; but said state governments shall remain in abeyance until the states shall be admitted into the Union, respectively, as provided by this act. In case the

constitution of any of said proposed states shall be ratified by the people but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States; and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law; and when such state is admitted into the Union, the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States, and the officers of the state governments formed in pursuance of said constitution, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories, at the time of their admission into the Union, shall be in force in said states, except as modified or changed by this act or by the constitutions of the states, respectively.

§ 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories or by congress, are hereby repealed. [Approved February 22, 1889, 25 Stat. 676.]

NOTES.—Section 11 is given as last amended by an act of congress, April 13, 1949, ch. 183, 62 Stat. at L. 170. This amendment was accepted by the state of Montana by chapter 18, Laws of 1949 (83-502).

Section 12 is given as last amended by an act of congress, February 26, 1957, P. L. 6, 85th Congress. This amendment was accepted by the state of Montana by chapter 209, Laws of 1957 (83-503).

§ 25. * * *

Compiler's Note

A note under this section in the parent volume refers to an act of congress, ch. 183, 62 Stat. at L. 170. The correct date of the act is April 13, 1948, not 1949 as shown in the parent volume.

References

Valley County v. Thomas, 109 M 345, 378, 97 P 2d 345.

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